

-DONZIGER CASE MONITORING COMMITTEE-

Michael Tigar | Nadine Strossen | Jeanne Mirer | Simon Taylor | Charles Nesson | Christopher "Kip" Hale
donzigercase@gmail.com

Chief Judge Laura Taylor Swain
Daniel Patrick Moynihan
United States Courthouse
Courtroom 17C
500 Pearl St.
New York, NY 10007-1312

Judge Loretta Preska
Daniel Patrick Moynihan
United States Courthouse
Courtroom 12A
500 Pearl St.
New York, NY 10007-1312

Chief Judge Debra Ann Livingston
United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

April 13, 2021
Via UPS

Re: Intent to Monitor *United States v. Donziger*, 19 Cr. 561 (S.D.N.Y.) Live; Audio Access
Required

Dear Judges Swain, Preska, and Livingston:

The case against Steven Donziger has garnered significant national and international interest, in countless publications across the planet. The Donziger Case Monitoring Committee, comprised of the members listed on this letter, was formed on August 17th of 2020 in response to numerous concerning developments in the case against world-renowned human rights defender Steven Donziger.¹ On Monday October 5th, Judge Loretta Preska held a hearing that furthered concerns from international trial monitoring experts also engaged in monitoring this trial with

¹ Grant, J., 2020. *Committee Formed to Monitor Steven Donziger's Contempt Trial for Due Process Violations* | *New York Law Journal*. [online] New York Law Journal. Available at: <<https://www.law.com/newyorklawjournal/2020/08/19/committee-formed-to-monitor-steven-donzigers-contempt-trial-for-due-process-violations/>> ("A new—and rarely seen inside the United States—trial monitoring committee has been created to, in its words, 'ensure' that upcoming federal trials of Donziger 'are conducted in a way that upholds due process, judicial ethics, and the rule of law'").

RECEIVED

APR 26 2021

**LORETTA A. PRESKA
U.S. DISTRICT JUDGE
S.D.N.Y.**

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respect to, *inter alia*, fundamental principles of due process of law, the right to a fair and public trial, the right to an unbiased judge and fact finder, and the right to a disinterested prosecutor.²

On Tuesday April 6, 2021, Judge Preska ordered that no audio/visual access would be allowed for the criminal contempt trial beginning May 10 of this year, forcing all observers to attend the trial in person, during a global pandemic.³ Judge Preska is well aware that both monitoring teams are relying on the same audio access that was available during the pre-trial proceedings to properly observe the developments live and eventually file monitoring reports. Judge Preska is also keenly aware of the tremendous amount of interest the trial has garnered from people all over the world, including various trial monitors, several of which live abroad. Ending access to the trial for anyone not attending in person is a significant infringement on the right to a public hearing, especially given the international scope of this case.

The fact that this order actually reduces the access already allowed for observers during the pre-trial proceedings in this case is a glaring violation of the right to a public hearing, and appears to be an intentional attack on monitors' ability to partake in live observation of the trial.

We have been monitoring, and will continue to monitor, the developments in this matter. Knowing the inherently dangerous situation due to COVID-19, and the countless lives lost, including judges and officers of the court, we request that there be enough space in the courtroom for every participant to maintain at least 6 feet in social distance, which would require a large courtroom. Thank you in advance for making the appropriate arrangements for both of these forms of public access. In furtherance of fair and public trials, this should also be, first and foremost, a *safe* trial.

Signatories,

² Lawyers' Rights Watch Canada. 2020. *United States v. Steven Donziger: Report of Monitors of a hearing in New York, 5 October 2020*. [online] Available at: <<https://www.lrwc.org/united-states-v-steven-donziger-report-of-monitors-of-a-hearing-in-new-york-5-october-2020/>>

³ *United States v. Steven Donziger*, 1:19-cr-00561 (dkt. No. 254.).

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- **Michael Tigar**, Professor Emeritus, Duke Law, fm. chair of the ABA Section of Litigation
- **Nadine Strossen**, John Marshall Harlan II Professor of Law, Emerita at New York Law School, fm. President of the ACLU
- **Jeanne Mirer**, President of the International Association of Democratic Lawyers
- **Simon Taylor**, Director and Co-Founder of Global Witness
- **Charles Rothwell Nesson**, the William F. Weld Professor of Law at Harvard Law School, founder of the Berkman Center for Internet & Society
- **Christopher "Kip" Hale**, Attorney specializing in atrocity crimes accountability, co-editor of the *International Due Process and Fair Trial Manual*

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